

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

LEGAL AID FOUNDATION OF LOS ANGELES<sup>1/</sup>

Employer

and

Case No. 31-UC-305

NATIONAL ORGANIZATION OF LEGAL  
SERVICES WORKERS, UNITED AUTO  
WORKERS, LOCAL 2320<sup>2/</sup>

Union-Petitioner

**REGIONAL DIRECTOR'S DECISION AND ORDER CLARIFYING UNIT**

The Employer, Legal Aid Foundation of Los Angeles, is a nonprofit organization that provides legal assistance to indigent clients throughout the Los Angeles area. The Petitioner, National Organization of Legal Services Workers, Auto Workers, Local 2320<sup>3/</sup>, filed a Unit Clarification Petition under § 9(b) of the National Labor Relations Act, as amended, herein referred to as the Act, seeking to clarify the existing

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<sup>1/</sup> The Employer, Legal Aid Foundation of Los Angeles, is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

The Employer is a corporation engaged in providing legal assistance. During the past twelve months, a representative period, the Employer, in the course and conduct of its business, received gross revenues in excess of \$250,000. During that same period, the Employer received in excess of \$2,000 in grants from the United States Government.

Thus, the parties stipulated and I find that the Employer meets the Board's discretionary, as well as its statutory, jurisdictional standard. *Camden Regional Legal Services*, 231 NLRB 224 (1977); *United Way of Howard County*, 287 NLRB 987 (1988).

<sup>2/</sup> The Petitioner's name appears as amended at hearing.

<sup>3/</sup> The parties stipulated and I hereby find that the labor organization involved herein, National Organization of Legal Services Workers, United Auto Workers, Local 2320, is a labor organization within the meaning of Section 2(5) of the Act. It is currently recognized by the Employer as the bargaining representative of certain of Employer's employees.

bargaining unit of Employer's employees which it represents by adding to it three job classifications.

A hearing officer of the National Labor Relations Board, herein referred to as the Board, held a hearing and the parties filed briefs with me.<sup>4/</sup>

The parties disagree on the inclusion of three job classifications in the unit. The Petitioner contends that the Administrative Assistant<sup>5/</sup> should be included in the unit while the Employer seeks to exclude her as a confidential employee. The Petitioner further asserts that the Director of Communications, herein referred to as the Communications Director, and the Grants and Compliance Manager should also be included in the unit. The Employer opposes their inclusion maintaining that they are managerial employees and/or lack a sufficient community of interest with other unit employees. The employees occupying the disputed positions work at the same facility, the West Los Angeles Office located at 1102 South Crenshaw.

I have considered the evidence and the arguments by the parties on each of the three issues. As discussed below, I have concluded that the position of Administrative Assistant is a confidential position under Board law and should be excluded from the unit. I have also concluded that the Communications Director and the Grants and Compliance Manager are managerial employees and should be excluded from the unit. Finally, I have determined that neither the Communications Director nor the Grants and Compliance Manager share a sufficient community of interest with other employees in the unit to warrant their inclusion in the unit.

To provide a context for discussion of those issues, I begin with an overview of the Employers' operations and labor relations history, followed by a discussion on the timeliness of the petition. Finally, I will present, in detail, the facts and reasoning that support each of my conclusions on the issues.

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<sup>4/</sup> The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

<sup>5/</sup> The title of the Administrative Assistant position as it appears in the current collective bargaining agreement is Administrative Assistant to the Director of Finance and Operations, Director of Advocacy and Training, the Director of Communications, the General Counsel, and the Director Private Attorney Involvement.

## I. OVERVIEW OF OPERATIONS AND LABOR RELATIONS HISTORY

On December 6, 1984, a Decision of Direction and Election issued involving the instant Employer and unit.<sup>6/</sup> The facts and findings of that decision are hereby incorporated into this decision to the extent that they do not conflict with the evidence established in the record.

The parties are in agreement that the Petitioner is the Section 9(a) bargaining representative of a multi-location unit encompassing professional and nonprofessional employees described in Article 3 of the current collective bargaining agreement and comprised of the following job classifications<sup>7/</sup>:

attorney, senior attorney, accounting clerk, administrative assistant, senior administrative assistant, administrative secretary, senior administrative secretary, consumer coordinator, development associate, facilities assistant, intake screener, senior intake screener, law clerk, legal secretary, senior legal secretary, outreach coordinator, senior outreach coordinator, paralegal, senior paralegal, director of private attorney involvement, receptionist, senior receptionist, reproduction supervisor, research assistant, technical service assistant, and training assistant.

The Employer employs approximately 151 employees, of which 119 are in the collective bargaining unit. Of its employees, the Employer views 9 as members of its core management team, which it defines as staff members who are involved in setting and implementing the Employer's policies. These persons are employed in the following job classifications: Director of Finance and Operations, the Director of

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<sup>6/</sup> The resultant 1985 Certification of Representative identified the Union of Legal Services Workers-Los Angeles, National Organization of Legal Services Workers, District 65, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, herein referred to as District 65, as the Certified Representative.

There is no dispute that the Employer and Petitioner are parties to the current collective bargaining agreement. The name of the Union in the current collective bargaining agreement is Union of Legal Service Workers, Los Angeles, National Organization of Legal Services Workers, Local 2320. The record is silent as to how the union's name of District 65 was changed to National Organization of Legal Services Workers, United Auto Workers, Local 2320. No party raised this as an issue.

The same Employer was involved in the 1984 Decision and Direction of Election, the 1985 Certification of Representative and the current proceeding.

<sup>7/</sup> The record establishes that the bargaining unit inclusions and exclusions described in the 1985 Certification of Representative is different than the inclusions and exclusions in the existing collective bargaining agreement between the Employer and the Petitioner.

Advocacy and Training, the Director of Administrative and Human Resources Services, the General Counsel, the Director of Development, the Communications Director, the Grants and Compliance Manager, the Fiscal Manager, and the Director of Technical Services<sup>8/</sup>. These job classifications have been defined in Section 3 of the current collective bargaining agreement as not being part of the unit. As noted in the bargaining agreement, of these nine, two of the job classifications (the Communications Director and the Grants and Compliance Manager) were excluded on the basis of the parties' disagreement as to their placement in the unit. These disputed classifications are now the subject of this proceeding.<sup>9/</sup>

## II. TIMELINESS OF THE PETITION

The most recent collective bargaining agreement between the Petitioner and the Employer is effective from July 1, 2001, to June 30, 2004. The instant unit clarification petition was filed on September 23, 2002. At the time of the execution of the contract, the parties expressly agreed that they could not reach an agreement on the unit placement of the three classifications, which, from the record, appear to be newly created positions.

Board law is clear with regard to proper invocation of the unit clarification process. It is appropriate for resolving ambiguities concerning the unit placement of individuals in newly created classifications. *Union Elec. Co.*, 217 NLRB 666, 667 (1975). The Board is hesitant to clarify bargaining units during the term of a collective bargaining agreement that clearly defines the bargaining unit since it would be unnecessarily disruptive of an established bargaining relationship. *Wallace-Murray Corp.*, 192 NLRB 1090 (1971); *San Jose Mercury*, 200 NLRB 105 (1972).

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<sup>8/</sup> It appears that the Director of Technical Services is referred to in the current collective bargaining agreement as either the Technical Services Coordinator or the Technical Services Manager.

<sup>9/</sup> As of the hearing, the positions of the Deputy Director, the Director of Joint Advocacy and the Chief Fiscal Officer were not filled. These positions are excluded from the bargaining unit. The Employer argues, in its post-hearing brief, that these high-level administrative positions were not identified as part of the Employer's core management team because they were not filled at the time.

In some limited circumstances, the Board finds that the interests of stability are better served by entertaining a unit clarification petition during the term of a contract. As such, on occasion the Board has processed a unit clarification petition shortly after a contract is executed where parties could not could not agree on the placement of certain classifications of employees and absent evidence that the petitioner abandoned its request in exchange for contract concessions. *St. Francis Hosp.*, 282 NLRB 950 (1987). The unit clarification question has also been properly considered when the parties' contract did not specifically recognize the disputed classifications in the unit. *Parker Jewish Geriatric Institute*, 304 NLRB 153 (1990).

Given the circumstances of this case, to permit processing of the petition at this time would not be disruptive of the parties' bargaining relationship. The unit clarification would resolve the parties' dispute as to the unit placement of what appears to be newly created job classifications. The petition should also be processed because, by expressly acknowledging its disagreement over the placement of the three classifications and not including the disputed classifications in the unit, at the time of contract execution, the Petitioner established a bona fide reservation of its right to file for clarification.

### **III. STATUS OF THE ADMINISTRATIVE ASSISTANT**

Before examining the specific duties and authority of the Administrative Assistant, I will briefly review the requirements for establishing confidentiality status. It is well established that the Board will exclude employees from the bargaining units if those employees "assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." *Bakersfield California*, 316 NLRB 1211, 1212 (1995) (quoting *B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956)). To be excluded from the unit, the employee must be "involved in a close working relationship with an individual who decides and effectuates management labor policy and is entrusted with decisions and information regarding this policy before it is made known to those affected by it." *Intermountain Electric Assn.*, 277 NLRB 1, 4 (1985). Thus, an employee will be found confidential if the employee has regular

access to confidential information, which, if prematurely disclosed to the union, would prejudice an employer's bargaining strategy in any future negotiations. *Bakersfield California*, 316 NLRB 1211, 1213 (1995); *Pullman Inc.*, 214 NLRB 762 (1974). "The amount of time devoted to a labor relations matter is not the controlling factor in determining confidential status." *Associated Day Care Services*, 269 NLRB 178, 181 (1984); *Reymond Baking Co.*, 249 NLRB 1100, 1101 (1980); *Bechtel Inc.*, 215 NLRB 906, 907 (1974).

As the Board noted in *Associated Day Care Services*, 269 NLRB 178, 180-181 (1984), mere access to grievance responses, personnel files and minutes of management, or the typing of such material is not sufficient to exclude an employee from the unit as confidential. Unless it can be proven that the "employee has played some role in creating the document or in making the substantive decision being recorded, or that the employee regularly has access to labor relations policy information before it becomes known to the union or employees concerned, the Board will not find the employee to have confidential status." *See also, Bakersfield California, supra at 1212.*

With regard to the Administrative Assistant, the record reveals that she works with persons who may well be considered top management and that, in the performance of her overall duties, she has access to confidential labor relations' information, which has not become known to the unit employees involved or the Petitioner. In support of this conclusion, I will first provide an overview of the position of the Administrative Assistant and then discuss her role in assisting in the preparation of and/or access to confidential labor relations information, specifically focusing on her access to confidential files, management offices, confidential data related to contract negotiations and notes of bargaining sessions, and her involvement with employee discipline, grievances and client complaints about employees. I will then discuss her place of work, wages, and benefits.

#### **A. Overview of the Administrative Assistant Position**

The job description for the position of the Administrative Assistant states that she is responsible for:

- Providing administrative support as needed to five persons;
- Scheduling meetings, preparing agendas and making logistical arrangements as necessary;
- Designing, implementing and maintaining a neat and orderly office filing system;
- Composing and typing correspondence of a routine nature that does not require draft preparation by the Administrative Staff;
- Proofreading completed typing work;
- Researching information or making inquiries on behalf of the Administrative Staff on selected projects;
- Assisting in the preparation of materials for monitoring, application or refunding purposes;
- Making recommendations to the administrative management staff, as appropriate, on various administrative procedures;
- Processing foundation wide training and travel request;
- Making all necessary arrangements for approval travel requests;
- Performing other duties as assigned, such as backup for mail, and other secretarial back up for administrative staff.

The record reveals that the role of the Administrative Assistant includes mailing, copying and filing. She also assists in the typing of collective bargaining contract negotiation notes and documents relating to grievances, employee evaluations and grievances. In addition, according to the record, the Administrative Assistant is the only person routinely providing administrative support as needed to (1) the Director of Training and Advocacy, (2) the Director of Finance and Operations, (3) the Director of Communications, (4) the General Counsel, and the (5) Director Private Attorney Involvement, herein referred to as PAI. These persons are employed at the same location as the Administrative Assistant. Of those named, the Administrative Assistant primarily reports to and spends the majority of her time working with the Director of Training and Advocacy and the Director of Operations and Finance. Of those five persons named, all, with the exception of the Director of Communications and the Director of PAI, have been expressly excluded in Section 3 of the current collective bargaining agreement as not being in the bargaining unit. The position of Director of Communications is one of the disputed positions. The position of the Director of PAI

was specifically included as a job classification in the bargaining unit in the collective bargaining agreement.

Significantly, with respect to those above-referenced positions for whom the Administrative Assistant provides support, and which have been excluded from the unit, it is clear from the record that some, if not most, of the individuals in those positions, decide and effectuate management labor policy and are entrusted with labor relation's responsibilities. The Director of Training and Advocacy reports to the Executive Director and is in charge of drafting employee performance evaluations, disciplinary memos and responses to employee grievances and client complaints. The Director of Finance and Operations also reports to the Executive Director. The Director of Finance and Operations is responsible for the areas of finance and accounting, human resources administration, development, communications, and technology. Additionally, she is involved with collective bargaining negotiations as part of the management team and prepares cost projections and financial analysis of various matters under consideration. This would include cost projections for proposals that management is considering but has not yet put on the bargaining table. Not all of the financial documents which the Director of Finance and Operations prepares during negotiations are ultimately disseminated to the Petitioner. The Director of Finance and Operations also works with the Director of Human and Administrative Resources on how to respond to grievances filed by Union employees. Finally, the Director of Finance and Operations handles complaints raised against Human Resources Administrative Services. These complaints do not necessarily become grievances.

**B. Role in Assisting in the Preparation of and/or Access to Confidential Labor Relations Information**

***i. Access to Confidential Files and Management's Offices***

In performing her duties, the Administrative Assistant is often asked by the Director of Finance and Operations to obtain documents for her from her office. Insofar as the record shows, the Administrative Assistant is the only administrative assistant and/or clerical employee who has access to this Director's file cabinets and does her

filing. While working for the Director of Operations and Finance, among the documents the Administrative Assistant sees and handles are those containing confidential budget or financial information.

While the Administrative Assistant has a master key to the offices of all of the Director's, including that of the Executive Director and Human Resources, her access to the office of the Director of Training and Advocacy is of particular importance. The Director of Training and Advocacy works approximately one day out of the week in another of the Employer's facilities, during which time he often calls the Administrative Assistant and instructs her to go into his office and locate certain information for him. In retrieving information from his office, the Administrative Assistant has access to and views documents pertaining to grievances, client complaints about employees and/or performance evaluations.

As to the Administrative Assistant's access to confidential files, the record shows she maintains in her control confidential information, which she prepares for the Director of Training and Advocacy. This information is stored in her computer on a file under his name and only she and he have access to it. The confidential information which she maintains for the Director of Training and Advocacy in her computer includes employee evaluations.

***ii. Access to Confidential Data Relating to Contract Negotiations and Notes of Bargaining Sessions***

The Administrative Assistant spends a vast majority of her time working with the Director of Operations and Finance who, during last collective bargaining sessions over the contract, was a member of management's collective bargaining team and prepared cost projections and financial analysis of different matters under consideration. The Director of Operations and Finance, who at the time of such negotiations had been recently hired in to her position, did not have the Administrative Assistant assist her in any way with the financial documents she prepared because she was new to the organization, did not know the guidelines and, thus, opted to do it herself. When the Director of Operations and Finance learned that the Petitioner was challenging the

Administrative Assistant's position her decision not to have the Administrative Assistant help her with certain confidential matters was reinforced.<sup>10/</sup>

Although the Administrative Assistant did not provide any assistance to the Director of Operations and Finance during the parties' last collective bargaining sessions over a contract, there is evidence that she provided assistance to others. The record shows that the Administrative Assistant typed up notes from collective bargaining sessions for the Employer. The record is silent as to what was in the notes or how they were used.

Besides typing bargaining notes, the Administrative Assistant also typed a memorandum from the Director of Training and Advocacy to the Executive Director dealing with potential layoffs. The Administrative Assistant understood the confidential nature of the contents of this document, which she was not at liberty to discuss with other staff members. The memorandum may be described as the Director of Training and Advocacy's recommendation on layoffs that would have a minimal impact on client services based on various factors, including, but not limited to, staffing patterns and client needs. The reason behind the preparation of this document relates to the parties' contract negotiations. Part of the Employer's overall budget assumption at that time was that it would have to reduce the number of staff, quite possibly, if not necessarily, through layoffs in order to implement the wage and benefit package that it was considering during negotiations. Notwithstanding that this assumption had been shared with the Petitioner, the memorandum was considered to be for management purposes only. Having typed this memorandum, the Administrative Assistant became privy to the confidential information.

***iii. Involvement with Employee Discipline, Employee Performance Evaluations, Grievances, and Client Complaints***

As to grievance handling, the record establishes that the Director of Training and Advocacy has had the Administrative Assistant type unit employee disciplinary

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<sup>10/</sup> The Director of Finance and Operations, who also handles grievances, also testified that she not seek the assistance of the Administrative Assistant in processing such documents since her position was in dispute.

reports, employee evaluations, documents relating to grievances, and client complaints concerning unit employees. In the six months prior to the hearing in this case, the Administrative Assistant estimated that she had typed five disciplinary memorandum/actions. This included disciplinary decisions regarding Union members. In addition, during the same period of time, she spent sixty five to seventy percent of the time typing employee performance evaluations.<sup>11/</sup> About fifteen to twenty percent of her time was spent on typing the Employer's responses to grievances. Typing disciplinary documents, evaluations and responses to grievances made the Administrative Assistant privy to confidential information about the employees in question and information, which had not been revealed to those employees.

In performing her duty of assisting the Director of Training and Advocacy with client complaints concerning employees, the Administrative Assistant types letters to clients notifying them that the Employer is aware of their complaints and contacts them for a follow-up. In the process of assisting with those complaints, the Administrative Assistant learns the identity of the staff member who is the subject of the complaint. Those who may be subject to a complaint include unit employees. The follow-ups with the clients may consist of a letter or a phone call. When phone calls are made, the clients sometimes provide the Administrative Assistant with more details regarding their complaint. The Administrative Assistant then forwards this confidential information to the Director of Training and Advocacy.

#### ***iv. Place of Work, Wages and Benefits***

The Administrative Assistant's office is located between the Accounting Department and three Directors' offices (the Director of Communications, the Director of PAI and the Director of Finance and Operations). She is a salaried employee and is eligible for compensation time off. She is not the only person who is paid a salary; it appears from the record that other employees, including unit employees, receive a salary and the same benefits.

#### **C. Conclusion on the Nature of the Administrative Assistant Position**

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<sup>11/</sup> This was the period in which performance evaluations were due.

Based on the factors discussed above, particularly focusing on the Administrative Assistant's access to confidential labor relations information to which other employees do not have access, I find and conclude that the Administrative Assistant is a confidential employee within the meaning of the act, and, therefore, should not be included as part of the bargaining unit. The Board has determined that an employee, like the Administrative Assistant, who has access to confidential matters dealing with contract negotiations is a confidential employee. *Kieckhefer Container Co.*, 118 NLRB 950, 953 (1957). See also, *Associated Day Care Services*, 269 NLRB 178, 181 (1984) (administrative assistants who regularly saw minutes of management meetings at which management proposals for collective bargaining were discussed excluded from the unit). The information to which the Administrative Assistant has access to, relating to collective bargaining, the Employer's financial matters, and employee evaluations and discipline, is not known to those employees affected by it or is such that, if prematurely disclosed to the Petitioner, could be prejudicial to the Employer's bargaining position. *Bakersfield Californian*, 316 NLRB 1211, 1213 (1995).

#### **IV. STATUS OF THE COMMUNICATIONS DIRECTOR**

To decide if the Communications Director should be excluded from the unit either because he is a managerial employee or because he lacks a community of interests with the collective bargaining unit, I will examine the factors which define an employee as a managerial employee, provide an overview of the Communications Director's job duties, his authority to formulate and effectuate management policies, and his wages and benefits.

Although the Act contains no explicit reference to managerial employees, the Supreme Court in *NLRB v. Bell Aerospace*, 416 U.S. 267 (1974) held that managerial employees were also excluded from the Act's protection. The Court defined managerial employees as those with discretion to "formulate and effectuate management policies by expressing and making operative the decisions of their

employer.” The Court noted that such employees “are much higher in the managerial structure” than the supervisors explicitly excluded by Congress, which “regarded [managerial employees] as so clearly outside the Act that no specific exclusionary provision was thought necessary.” *Id. at 284.*

The *Bell Aerospace* definition of managerial status has been narrowly applied. “Many employees whose job titles indicate on the surface managerial status and whose job descriptions call for a high degree of responsibility...have been found to be employees rather than managerial personnel since they do not exercise sufficient independent discretion or otherwise effectuate management policies.” *Curtis Industries, Division of Curtis Noll Corporation*, 218 NLRB 1447, 1448 (1975). Where it is shown that the employee’s decisions are governed by detailed management policies, procedures, guidelines or government rules or regulations, that employee will be found to be non-managerial. *Southwest Airlines Co.*, 239 NLRB 1253 (1978).

Thus, individuals can be excluded from the bargaining unit as managerial employees if they “exercise discretion within, or even independently of, established employer policy and are aligned with management.” *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). It must be shown they “represent management interests by taking or recommending discretionary actions that effectively control or implement employer policy.” Managerial status is thus “reserved for those in executive-type positions, those who are closely aligned with management as true representatives of management.” *General Dynamic Corp.*, 213 NLRB 851 (1974).

With respect to editorial writers, the Board has traditionally not found them to be managerial employees on the basis that the mere editing, rewriting stories or determining which stories to cover, without more, is insufficient for a finding of managerial status. The rationale behind such a ruling is that such job responsibilities only require the exercise of professional journalistic judgment as to the newsworthiness of a story rather than managerial authority. *Capriccios Restaurant, Inc.*, 294 NLRB 685, 692 (1980); *Washington Post Co.*, 254 NLRB 168, 208-210 (1981). However, in some cases, the Board has found that the duties of editorial writers differ significantly from the duties of those editorial writers whom it has found to be non-managerial employees and therefore should be excluded from the unit. Such is the

case where editorial writers are responsible for implementing fundamental changes in the reorganization of a newspaper and chairing several weekly meetings, including meetings with directors (high level management) in which policy for long range advertising are generated. *Bulletin Co.*, 226 NLRB 345, 358 (1976).

In *Bulletin Co.*, the Board found that the nature of the duties and responsibilities of the employer's editor of the Sunday paper excluded him as a managerial employee. In so holding the Board noted that the Employer had restructured its Sunday paper as a result of the editor's policy memorandum presented to top executives. The Board also paid particular attention to the meetings chaired by the editor and emphasized that one of these was a weekly meeting with directors during which plans for advertising and promotions were devised. *Id.* at 358 and footnote 36.

As to whether the Communications Director is a managerial employee, the evidence shows that the Communications Director is authorized to exercise discretion in making decisions and his duties are connected to the formulation or effectuation of company policy within the meaning of *Bell Aerospace* and other decisions cited above. As a result, after providing an overview of the Communications Director's position, I will discuss the role of the Communications Director in formulating and effectuating management policies, including his involvement with external print and electronic communications, management meetings, media policy, the training of employees, his exercise of independent judgment, his authority to approve purchases, and his role in potential labor disputes. I will then address his place of work, wages and benefits, and conclude with a community of interest analysis.

#### **A. Overview of the Communications Director's Position**

The Employer created the Communications Director's position about two years prior to the hearing to enhance the Employer's reputation and profile in the community. The job description for this position identifies the Communications Director as the person responsible for planning, implementing and managing a comprehensive marketing and public relations program to enhance the Employer's visibility and image in the community so as to foster political support, volunteer service

and fund development. The duties and responsibilities of the Communications Director as specified in the position description are:

- Collaborate with senior management and board leadership to identify short and long-term marketing objectives, and implement coordinated efforts targeting specific key audiences such as the legal community, corporate leaders, influential decision makers, and the general public to help achieve those objectives;
- Oversight of all external print and electronic communications, including the annual report, newsletter, brochures, web page, and other public communications, to ensure quality and consistency;
- Coordination of appropriate staff contributions to the content, design and production of internal and external print and electronic communications;
- Direction of an effective media relations strategy, including developing press contacts, collaborating with staff in the development of press releases, feature stories and editorials, and providing media training and support to staff for interviews, press conferences and other media outreach efforts.

At the hearing, the testimony supported the position description provided by the Employer. The record revealed that the Communications Director's main job function is enhancing the image of the Employer within the general community and then specifically bolstering the image within the donor base and potential donor base. With respect to his involvement with the external print and electronic communications, the testimony was also consistent with the job description that the Communications Director works on press releases, newsletters, the annual report, web site stories, and other public communications. In his role of directing effective media strategy and developing press contacts, he is responsible for recommending media strategies and meeting with press contacts.

Although the job description of the Communications Director states that he reports to the Executive Director, the record establishes that he actually reports to the Director of Finance and Operations and works directly with the Executive Director. The Executive Director testified that with regard to decisions that the Communications Director recommends, he does not always ask for the reasons behind them and follows the Communications Director's recommendation the vast majority of the time.

**B. The Communications Director's Authority to Formulate and Effectuate Management Policies**

***i. Involvement with the External Print and Electronic Communications***

The Communications Director acts as the Chair of the Market Development Committee and its subset committees, comprised of the newsletter, the annual report and website stories committees. The purpose of the Market Development Committee is to set direction, policy and general guidelines insofar as the media is concerned. The members of this Committee have the task of writing an OP ED<sup>12/</sup> or a newsletter article, or overseeing those who have been assigned to these assignments. The role of the Communications Director as Chair is to keep the members of the Committees focused on these tasks. If a Committee member does not accomplish an assignment, the Communications Director will have to report to the Executive Director. The Communications Director's role as chair is also to propose the agenda for the meetings.

The Market and Development Committee meets approximately every 6 weeks. The Committee members are comprised of a mixture of unit employees and management. The members are (1) the Executive Director, (2) the Director of Development, (3) the Assistant to the Director of Development, (4) the Grants and Compliance Manager, (4) the Directing Attorney of the Community Economic Development Unit (CED), (5) the Director of Special Projects, and (6) several staff attorneys.<sup>13/</sup> In terms of policy decisions that emerge out of the Market Development Committee meetings, as Chair, the Communications Director is ultimately responsible for implementing those decisions. The record contained no detailed information regarding what steps the Communications Director takes to implement such policy decisions.

As to his relationship with the press, the Communications Director drafts press releases and performs follow up calls. He meets with press relations' personnel as a

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<sup>12/</sup> OP ED is a term of the craft. It means opposite the editorial page (traditionally in a newspaper this would be the left side of the paper). It refers to editorials in a paper from persons other than the newspaper staff that sets out their positions on a given topic.

<sup>13/</sup> Staff attorneys are bargaining unit employees.

representative of the Employer and responds to their phone calls. When contacted by news reporters, he may direct them to the particular staff member handling the matter and/or if asked about the Employer's policy, explain such policy. The Communications Director will not give quotes to the press, as either senior management or the staff attorneys generally give these.

In deciding which stories to cover in the Employer's print and electronic communications, the Executive Director and the Communications Director may have a discussion of the specifics they would like to cover in any given press story. The Communications Director has the discretion and authority to attend case review sessions at other Employer offices where he can meet with staff to engage in discussions about possible new stories and/or engage in media strategy around a particular case that might have implications for the Employer. Another avenue for receiving stories is the monthly meetings with the Directing Attorneys and the weekly senior management meetings.

The Communications Director is involved with the overall production of the Employer's external communications. When drafting stories for the newsletter, the annual report or the web page, he drafts them to be consistent with what he understands to be the Employer's overall priorities and policy. In addition to drafting stories, he is also responsible for editing and re-writing such stories when they are drafted by others.

With respect to the Employer's publications, the newsletter, which is published three times a year, can be anywhere from eight to sixteen pages long. The Communications Director is not only in charge of overseeing its production but makes sure that it is completed in a relatively timely fashion. The Annual Report, by definition, is published annually and can be about thirty pages long. The Communications Director writes, edit stories, verifies the accuracy of the financial information provided in the report, and oversees the report's printing and photography. Before the report is issued, the Executive Director, the Development Director and the Director of Finance and Operations review the report. So far as the record shows, the review is minimal

as opposed to substantive. Lastly, with regards to the website, like with the rest of the print communications, the Communications Director is on a regular basis responsible for the stories that the Employer puts on its internet site.

***ii. Attendance in Management Meetings***

With respect the Communications Director's attendance at management meetings, he participates in a weekly meeting with management chaired by the Director of Finance and Operations. Present at this meeting are the Director of Development, the Director of Technology, the Director of Human Resources, and the Head of Accounting. Unit employees are excluded from attendance. Evidence regarding what is discussed includes topics regarding the status of the different departments, fiscal considerations and issues concerning management and labor relations. There are also some general discussions about the status of contract negotiations and the specific issues that are being presented. The Communications Director understands that these negotiation discussions are confidential.

***iii. Involvement With Media Policy and Training of Employees***

The Employer has an established media policy, which the Communications Director is responsible for promoting and implementing. After being hired, the Communications Director was asked to draft a new media policy. The record is ambiguous as to whether any steps have been taken to accomplish this or what would be the exact nature of the Communications Director's involvement in drafting such policy.

What is evident from the record is that the Communications Director has recommended to senior management the ways in which the Employer's media relations' strategy could be more effective. Since the Communications Director is responsible for the direction of an effective media strategy, he has written some proposed media strategies. Among these strategies, which have been implemented, is that of regularizing the OP ED's, which entails being more consistent on the kinds of stories received from attorneys and what is placed on the web site.

Also in relation to his work with promoting and implementing the Employer's media policy, the Communications Director conducts optional training for employees, such as attorneys and paralegals, who may have minimal experience with the press. He is responsible for developing the training content and the presentation at the training sessions. At least one training session has been held. From the record it appears that the training consisted of bringing in outside persons for presentations.

The Communications Director trains employees on the parameters of what to discuss with the media and understanding how to manage that process. There is some, albeit limited, evidence that while there has been discussion about the Communications Director designing and setting up a training in how to write an article; this kind of training has not yet been implemented. The Communications Director's authority to conduct training is such that he does not have to seek approval before he creates a program for employees or supervisors.

***iv. Type of Independent Judgment Involved or Required***

The Communications Director has been given a degree of independent discretion and judgment in the performance of his duties. He is given directions on what to do about once a week and estimates that he receives instructions covering no more than 15% of his work time out of the year. From the record it appears that these directions concern what he should focus on, but not on how to accomplish tasks. Since it is the Communications Director's job, on a day-to-day basis, to implement what he understands his tasks to be, he has the discretion to set up the procedures he needs in order to carry out his job responsibilities. For example, the Communications Director has the ability, on his own, to set up training sessions and their contents. Concerning the case review meetings, he decides when to attend these or whether to attend at all. The evidence in the record suggests that when he attends these meetings, it is ultimately within his discretion to decide if a case reviewed presents a newsworthy story the Employer should promote. The decision as to which story to promote is based on the Employer's overall policy objective and what the Communications Director considers makes a good story.

Regarding the articles or OP ED's that attorneys draft, the Communications Director reviews the drafts, makes commentaries and may even re-write the documents. He then passes the drafts to the Executive Director. At the end of the process, if the Communications Director judges that the story should not be published or sent to the media, he has discretion to make his recommendation known to the Executive Director. With reference to his involvement with writing and editing, the nature of his work is such that it is subject to review and critique.

**v. Authority to Approve Purchases**

The Communications Director is authorized to make purchases insofar as they relate to his job. The purchases are of a routine nature (i.e. remittance envelopes). There are expressed dollar limitations placed on his purchasing authority.

**vi. Role in Employer's Labor Dispute**

At the hearing, the Communications Director testified that in case of a serious labor dispute involving the Employer, with high publicity, senior management would expect him to oversee the press release and collaborate with them to determine the Employer's communication strategy regarding the dispute. The Communications Director would not be at liberty to discuss the Employer's communication strategy with employees or the Petitioner. Since the creation of the position of Communications Director there have been no labor disputes that have resulted in publicity of any kind.

**vii. Place of Work, Wages and Benefits**

The Communications Director has his own office, with the offices of Director of PAI (a unit employee) and the Director of Finance and Operations on one side and the office of the Administrative Assistant on the other side.

The Communications Director is a salaried employee. He works approximately 45 to 50 hours a week and sometimes works on the weekends. His schedule is similar to some unit employees, such as the attorneys. The Communications Director shares the same overall benefits (health, pension,

vacation, and sick leave benefits) as other unit employees, with the exception of salary. Notwithstanding these similarities with other unit employees, the Communications Director testified that he does not see his interests being aligned with those of unit employees.

### **C. Conclusion on the Communications Director's Managerial Status**

In light of the above and the record as a whole, I conclude that the evidence establishes that the Communications Director should be excluded from the unit as a managerial employee. The Communications Director has significant discretion in formulating or effectuating the policies of the Employer and his interests are more closely aligned with those of management than with unit employees. The duties of the Communications Director are significantly different from those considered by the Board to be non-managerial employees. With reference to his managerial authority, the record indicates that he is not governed by extensive detailed written policies, procedures, rules, and regulations. The record does not show the Communications Director is restricted by step-by-step instructions for handling most situations that might arise in the course of his work. He has been left with much discretionary decision-making authority. Aside from his independent judgment, the Communications Director possesses a management role that distinguishes him from other unit employees. In addition to his participation in management meetings, he has been privy to management conversations relating to collective bargaining negotiations and employer-employee relations.

### **D. COMMUNITY OF INTEREST ANALYSIS**

For the reasons set forth below, even assuming the Communications Director is deemed to be an "employee" within the meaning of Section 2(3) of the Act, I find that the Communications Director does not share a sufficient community of interest with employees in the unit.

There is little evidence in the record regarding the traditional community of interest factors. However, the evidence presented reveals that the nature and focus

of the Communications Director's duties and responsibilities differ substantially from those of other unit employees. Although there are similarities in his wages, hours and working conditions with those of other unit employees, his role as Communications Director distinguishes him from other unit employees.

The Communications Director communicates with unit employees, such as attorneys and paralegals, but also more often than not works with senior management. He deals directly with top executives and attends management meetings, where confidential information is discussed. He chairs the Market Development Committee and its subset committees, and writes proposed media strategies, of which one has been implemented. He also creates and conducts staff training, approves Employer purchases and reviews story drafts created by unit employees.

For the preceding reasons, I do not find that the Communications Director shares a sufficient community of interest with the unit and therefore should be excluded on this basis as well.

## **V. STATUS OF THE GRANTS AND COMPLIANCE MANAGER**

In making a determination on the status of the Grants and Compliance Manager, I will first restate the applicable definition of a managerial employee under Board law. I will then provide an overview of the duties of the Grants and Compliance Manager followed by a discussion of her authority to formulate and effectuate management policies and her independent judgment. Within this analysis, I will specifically discuss the Grants and Compliance Manager's main job duties with respect to grants and compliance, the meetings she participates in, the Employer's print communications, case closing codes, and her place of work, wages and benefits. Finally, I will address her lack of community of interest with other employees in the unit.

As noted earlier, the Board has defined managerial employees as those "who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy." *General Dynamics Corp.*, 213 NLRB 851, 857 (1974). See *NLRB v. Bell Aerospace Co.*, 416 U.S. 267

(1974). In the instant case, there is sufficient evidence to establish that the Grants and Compliance Manager is a managerial employee.

#### **A. Overview of the Grants and Compliance Manager Position**

The Grants and Compliance Manager reports to the Development Director. However, on matters of compliance, she works directly with the Executive Director. Both the Development Director and the Executive Director are excluded from the unit in the unit description of the current collective bargaining agreement.

The extent of the Development Director's supervision over the work of the Grants and Compliance Manager is minimal. The two function autonomously as a team and meet approximately every two weeks. The Grants and Compliance Manager, for the most part, carries out her work responsibilities on her own. She uses personal discretion and then shows her work product to the Development Director.

The Employer proffered the job description for the position of the Grants and Compliance Manager, which it prepared with the assistance of the Grants and Compliance Manager herself.<sup>14/</sup> The job description provides that, under the supervision of the Director of Development, the Grants and Compliance Manager has wide-ranging oversight of all grant-related activities, including managing existing grants, mandating compliance with funding provisions of grants and seeking new sources of support. The duties and responsibilities of the Grants and Compliance Manager as described in the position description are to develop and implement policies and procedures to effect programmatic compliance with all public and private funding contracting, including:

- Working with the Finance Department to facilitate the appropriate allocation and timely invoicing of grant funds;
- Tracking staff time and non-personnel expenditures allocated to specific projects;
- Generating case statistics and collecting other outcome data;
- Submitting required financial and performance reports;

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<sup>14/</sup> There is no evidence on the nature of the Grants and Compliance Manager's assistance.

- Working with Directing Attorneys to supervise staff compliance with timekeeping, case management, and other requirements imposed by Legal Services Corporation, herein referred to as LSC,<sup>15/</sup> and other funding sources;
- Monitoring performance of contractual partners;<sup>16/</sup>
- Chairing a staff committee, referred to in the record as the Legal Services Corporation Compliance Committee, herein the LSC Compliance Committee, charged with ensuring programmatic compliance with grants from LSC and other funding sources;
- Serving as a primary liaison to representatives of granting agencies and contractual partners, including negotiating contract terms consistent with the Employer's program priorities; ensuring timely and effective communication, and coordinating monitoring visits and presentations;
- Researching, writing and coordinating submission of public and private grant applications on the local, state and national level, including recommending projects for funding and developing grant budgets and staffing patterns;
- Working with program staff to expand existing programs and create new programs for funding. In association with the Executive Director and Director of Development, cultivate and maintain relationships with foundation and corporate grant officers and develop and implement strategies for increasing the Employer's visibility in the funding community;
- Assisting the Director of Development and Executive Director with other resource development activities as needed.

**B. The Grants and Compliance Manager's Authority to Formulate and Effectuate Management Policies, and Independent Judgment**

***i. Main Job Duties with Respect to Grants***

The duties of the Grants and Compliance Manager may be divided into two areas: grants and compliance. Grants are the Employer's source of funding, while

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<sup>15/</sup> The LSC is the Employer's largest funding source.

<sup>16/</sup> The term contractual partner, as used here and thereafter, applies to a granting agency or funding source. The Employer is the sub-grantee for the legal services for the grants.

compliance ensures the Employer acts in accordance with certain regulations to avoid losing any funding.

The type of grants the Employer receives affects the overall mix of the legal services it ultimately provides to its clients. Some practice areas are heavily dependent on grants as a source of funding. As such, the types of grants the Grants and Compliance Manager is successful in obtaining can play a role in the overall quantity of particular services offered.

The Grants and Compliance Manager's role with respect to grants includes ensuring the Employer receives funding. This entails demonstrating the Employer is eligible for funds and is a good investment for those funds. It also involves establishing the Employer has the capacity to fulfill the terms of the grant and developing a compelling case for those who will decide whether the grant will be awarded to the Employer.

At the time of the hearing, the Employer had approximately twelve grants. The procedure by which the Employer obtains a grant is as follows. The granting or funding source makes a request or a proposal. Then, the Employer submits an application proposal to the funding source. This can be drafted by the Grants and Compliance Manager or a staff advocate, involved with the project. The response grant proposal outlines the Employer's proposed plans for fulfilling the request of the funding source. Generally, the guidelines for submitting a response application involve answering questions, within in a specified amount of pages, posed by the funding source. Once the grant application is drafted, it is forwarded for review to the Development Director and the Executive Director.

Due to her involvement with grants, the Grants and Compliance Manager serves as a liaison to the representatives of the granting agencies, including working with those granting agencies and negotiating grant contract terms. Some granting agencies often call the Grants and Compliance Manager first if they have a question about the services the Employer is providing. In her role as liaison, the Grants and Compliance Manager attends meetings that granting partners or contractual partners request she attend. The Grants and Compliance Manager is not typically the only

Employer representative at such meetings. The Directing Attorney from the Santa Monica office may also be present.

In the process of applying and/or implementing the terms of a grant, issues may arise which the Grants and Compliance Manager needs to negotiate with the granting agency. For example, the Grants and Compliance Manager may discuss and negotiate using some of the grant funding money for another purpose related to the project being funded (i.e. the Employer may want to use money allocated for computers for hiring interpreters). The record is devoid of evidence showing the Grants and Compliance Manager receives instructions from her superiors regarding the specific terms to be worked out with regards to a particular grant.<sup>17/</sup>

Aside from preparing grant proposal materials and negotiating contract terms, the Grants and Compliance Manager is also responsible for researching grant opportunities, identifying funding sources, working with staff to develop ideas for seeking funding, and managing grants in conjunction with other administrative staff. With respect to researching and identifying funding sources, the Grants and Compliance Manager recommends grants sources or projects for funding, which she has researched and located on her own, to senior management.<sup>18/</sup> These tasks are a common aspect or a significant portion of the Grants and Compliance Manager's job requirement responsibilities, which she has discretion on how to carry out.

If senior management decides to shift the direction of the types of legal services it wants to provide, the Grants and Compliance Manager is expected to pursue funding consistent with the shift. In fact, part of the Grants and Compliance Manager role is to recommend shifts in priorities based on available funding or client need. As of the date of the hearing, the Grants and Compliance Manager had not yet recommended a change in the Employer's substantive priorities.

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<sup>17/</sup> When asked to talk about her duties in negotiating language for agreements, the Grants and Compliance Manager responded that the term negotiating may be overstating what she does. While, the Grants and Compliance Manager seems to be objecting to the use of this term, the term is used in this decision as this was the term used in her job description and, I find, it accurately describes her actions in conferring with the grantors to arrive at an agreement on the terms of a grant.

<sup>18/</sup> She spends fifty percent of her time writing and researching grants.

The Grants and Compliance Manager engages in conversations with senior management, such as the Executive Director or the Development Director, over the types of services the Employer would like to either increase or decrease. These are topics of conversations at management meetings and development meetings. With respect to service goals that may be established by senior management, it is the Grants and Compliance Manager's duty to seek out grants that enable the Employer to meet such goals. In doing so, she is given much discretion to decide how she is going to spend her time in an effort to meet these goals.

Concerning additional evidence of her involvement with grants, the record shows that the Grants and Compliance Manager has spoken with senior management about the creation of a strategic plan regarding grants.<sup>19/</sup> While the plan is not yet in existence, the Grants and Compliance Manager envisions her role in terms of formulating this plan as the person making a recommendation and a proposal for discussion. She also foresees herself collaborating with senior management on developing that strategic plan.

***ii. Main Job Duties with Respect to Compliance***

Once the Employer secures a grant, the Grants and Compliance Manager is responsible for its compliance. This includes assuring the fulfillment of the Employer's legal obligations as imposed by the various funding sources. It may also involve compliance in terms of statutory law and, to a lesser extent, compliance in terms of Employer policy, what management expects employees to comply with.<sup>20/</sup> A major part of compliance deals with LSC, which, as noted earlier, is the Employer's main funding source.<sup>21/</sup> Since approximately seventy percent of the Employer's funding

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<sup>19/</sup> The record does not reveal the content of this conversation.

<sup>20/</sup> An example of compliance with grant requirements is the income restrictions imposed on the Employer, which require the Employer to provide services to those only under a specific income level.

<sup>21/</sup> The LSC is a government agency funded by Congress, which disperses its funds to legal services agencies, like the Employer.

comes from LSC, it is imperative for the Employer to ensure compliance with LSC funding rules and regulations.

To enforce compliance policy, audits, training and report drafting are conducted. With respect to the audits, it appears from the record that the Grants and Compliance Manager works with auditors and representatives from the funding sources who review the Employer's cases. The LSC Compliance Committee, which is chaired by the Grants and Compliance Manager, is in charge of performing audits and self-inspections, the results of which are made known to employees. The record fails to provide further evidence on audits.

Most of the LSC matters and compliance with other funding sources are handled through the LSC Compliance Committee. Among those who are members of the LSC Compliance Committee are the Executive Director, the Director of Advocacy, the Directing Attorney of the Employer's Santa Monica Office, the General Counsel, and a staff attorney.<sup>22/</sup> As Chair of the LSC Compliance Committee, the Grants and Compliance Manager makes suggestions or recommendations, at the Compliance Committee meetings, about how to proceed with compliance issues.

The LSC Compliance Committee is in charge of formulating new policy and suggestions as to how to ensure compliance. Once the Compliance Committee has made certain policy decisions, it is the responsibility of the Grants and Compliance Manager to write the policy directives and communicate that information to the staff. The Grants and Compliance Manager does not have a set of written procedures that she must follow when communicating the LSC Compliance Committee's new policy to employees. She has independent authority and discretion to determine how she is going to convey policy decisions (i.e. whether through an e-mail or a memorandum). She also has discretion on deciding how she is going to focus her time and resources to ensure that compliance with the policy is met.<sup>23/</sup>

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<sup>22/</sup> The staff attorney is the only member who is included in the current collective bargaining unit description. All others are expressly excluded.

<sup>23/</sup> With respect to the Grants and Compliance Manager's independent judgment, the Petitioner argues, in its post-hearing brief, that the Grants and Compliance Manager herself testified she cannot exercise independent judgment or discretion. The record shows that when asked whether she had independent judgment or discretion to do things that were not necessarily comporting to established

Aside from formulating policy, the LSC Compliance Committee trains employees with respect to the LSC regulations and the preliminaries of compliance. The Employer holds the Grants and Compliance Manager responsible for developing training courses, manuals or the written material that is presented to the staff. The Grants and Compliance Manger works with the LSC Compliance Committee in preparing such training material and presentations.

As to the actual training sessions themselves, the record indicates that, although the Executive Director is the main person to conduct training, the compliance team goes to the different unit locations to perform training. Most of the staff members that are being trained are members of the bargaining unit. However, it appears that supervisors may be present as well.

***iii. Types of Meetings Attended***

The Grants and Compliance Manager attends the development, LSC compliance committee and management meetings. The development meetings are held every week while the LSC Compliance Committee convenes quarterly. The management meetings are conducted once a month.<sup>24/</sup>

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management policies, the Grants and Compliance Manager responded she was not sure what this meant. Upon further explanation, the Grants and Compliance Manager explained that if there was a specific policy toward something, she thought she had to carry it out. She then was asked whether this meant she had no discretion or independent judgment to stray away from that in at least some fashion or manner. The Grants and Compliance Manager then asked for an example, implying she did not understand the nature of the questioning, to which she received the response "Yes. Well, it seems your answer is no. That's what you said, right?" The Grants and Compliance Manager then followed up by explaining that if she thought something was wrong, she could talk to Employer about changing it, but she did not know whether she could just disregard it.

While this evidence alone is not detailed enough for me to make a conclusion on the degree of independent judgment that the Grants and Compliance Manager possesses, the rest of her testimony, which is factually intensive and which is discussed throughout the decision, leads me to conclude she possesses a high degree of independent judgment and discretion.

<sup>24/</sup> The Grants and Compliance Manager was unsure if any unit employees attended the management meetings.

At hearing, the Grants and Compliance Manager was asked whether she participated in meetings specifically conducted or at least in part conducted to either formulate or effectuate management policies. She responded that she did participate in meetings of that type but failed to reveal which meetings she was referring to. When questioned whether she participated in labor relations matters, she denied she did. When asked whether she has access to knowledge, data or records pertaining to labor relations, she responded that she did not without further explanation. While these responses do not lend themselves for a factual legal analysis and the questions call for a legal conclusion, the rest of the evidence, based on testimony where the duties of the Grants and Compliance Manager were explained in more detail, demonstrates that she has some involvement in formulating policy or participating in labor relation matters.

The Executive Director testified that, to his knowledge, the Grants and Compliance Manager participates in meetings in which labor relations are discussed, including updates on the collective bargaining. As such meetings, it would not be the Grants and Compliance Manager's responsibility to have an input on the resolution of issues relating to the labor relations matters but she would privy to such information.<sup>25/</sup>

***iv. Role Concerning the Employer' Print Communications and Case Closing Codes***

***(a) Role Concerning the Employer's Print Communications***

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<sup>25/</sup>As to the Grants and Compliance Manager access to Employer information which is potentially confidential, the Executive Director further testified that the Grants and Compliance Manager could have access to the Employer's file records but having access to such information is not part of her regular duties in developing grant proposals. Also, there was evidence that while the Grants and Compliance Manager could have access to salary information used in connection with grant proposals, this information is not completely confidential information but only of a sensitive nature.

Finally, with regards to the Grants and Compliance Manager participation in management conversations regarding additions or reductions in the size of the Employer's workforce, there is no evidence of her having participated in this. The Employer admits that while this would not be one of her primary functions, there is an exception which would include her in such conversations. To the extent that a change in the terms of grants or the reduction in a grant amount would ever have an impact in the Employer's workforce, the Grants and Compliance Manager would be involved in that discussion.

The job description for the Compliance Manager provides that part of her duties are to develop and implement policies and procedures to effect programmatic compliance with all public and private funding contracting. In an effort to accomplish this, the Grants and Compliance Manager makes certain that the compliance policies contained in the Employer's manual of policies and procedures, herein referred to as the manual, are clear and easily understood by the staff, as well as complete, consistent and disseminated to all. The Grants and Compliance Manager edits the Employer's manual by taking the old manual and confirming it to current policy. The Grants and Compliance Manager testified that while she is not sure whether specific directions have been given to her as to how the manual should look, she does remember making a draft, which was then reviewed by the Executive Director who made some changes. The Grants and Compliance Manager has also drafted handouts for the staff regarding compliance issues. If the handouts are going under the Executive Director's name, he re-writes or revises the drafts as he sees fit.

(b) Case Closing Codes

With respect to assisting in creating procedures that relate to compliance issues, the Grants and Compliance Manager spent a lot of time working on the case closing codes and the policy surrounding this. LSC has certain closing codes, which the Employer was having problems with. To resolve the problem, the Employer devised its own closing codes, apparently in addition to LSC closing codes. The Grants and Compliance Manager made suggestions and provided input for how the closing codes policy should read and what it should consist of.<sup>26/</sup>

v. **Place of Work, Wages and Benefits**

The office of the Grants and Compliance Manager is an exterior office adjacent to the Technical Director (also referred to in the records as the Computers Director). Generally, the Grants and Compliance Manager has the same overall health, pension,

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<sup>26/</sup> Staff members who do not properly follow compliance procedures, are potentially subject to discipline by the Employer.

sick leave, and vacation benefits as other unit employees. She works ten to twelve hour days, a schedule worked by other employees in the unit work. She enjoys a unique pay scale that is not tied to any other pay scale either in or out of the bargaining unit. However, her salary scale is similar to the broad range of where some unit employees are, such as the attorneys.

### **C. Conclusion on the Grants and Compliance Manager's Position**

Many of the duties of the Grants and Compliance Manager are not routine. Her performance in fulfilling her duties is made without detailed guidance from her supervisors. Many of her responsibilities are not circumscribed by detailed policies or instructions.

Aside from her independent judgment, the evidence shows that the Grants and Compliance Manager is held out as an authoritative voice of the Employer's grants and compliance program. She chairs the LSC Compliance Committee, disseminates to the staff the Employer's policy regarding compliance and negotiates grant terms. She also makes recommendations to the Employer about which grants should be pursued, updates the Employer's manual, and provides significant input on Employer policy. The Grants and Compliance Manager is a manager and therefore should be excluded from the unit on that basis.

### **D. COMMUNITY OF INTEREST**

While the managerial status of the Grants and Compliance Manager in itself effectively places her outside the unit, that result is also obtained because the record shows that she does not share a sufficient community of interest with other unit employees. Although, the Grants and Compliance Manager may work under similar working conditions, receive similar pay and works similar hours, I have concluded that she does not share a sufficient community of interest with other employees in the unit. The duties and role of the Grants and Compliance Manager are of such a nature that they distinguish her from other employees. The Grants and Compliance Manager chairs the LSC Compliance Committee, negotiates grant contract terms with funding

agencies and is held responsible by the Employer for ensuring grant compliance with requirements imposed by funding agencies, statutory law and Employer policy. She is involved in the development of new policy, drafting and revising the Employer's manual of policies and procedures. In this respect, in the context of the employer-employee work relationship, the job function of the Grants and Compliance Manager is aligned with management, rather than unit employee interests.

### **OVERALL CONCLUSION**

In conclusion, for the reasons set forth above and on the basis of the record as whole, I find and conclude that the existing unit should not be clarified to include the positions of the Administrative Assistant, the Director of Communications and the Grants and Compliance Manager. Accordingly, I shall clarify the unit to exclude these classifications.

### **ORDER**

IT IS HEREBY ORDERED that the bargaining unit involved herein be, and hereby is, clarified to exclude the classifications of Administrative Assistant, the Director of Communications and the Grants and Compliance Manager.

### **RIGHT TO REQUEST REVIEW**

Under the provision of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **April 17, 2003**.

**DATED** at Los Angeles, California this 3<sup>rd</sup> day of April, 2003.

/s/ James J. McDermott

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